



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-25
Regulation title	Auxiliary Grants Program
Action title	Amend Fiscal Reporting Requirements
Date this document prepared	June 18, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed amendments to 22VAC40-25 remove the requirement for assisted living facilities with 20 or more residents to submit an annual audit report and replace it with a requirement that administrators of all assisted living facilities complete, sign and submit an annual Auxiliary Grant (AG) certification report. The report includes general resident census and financial information and a statement certifying that the facility properly handles and accounts for AG recipients' personal needs allowances and is in compliance with applicable AG program and the Department of Social Services' licensing regulations. The proposal also includes related technical and grammatical amendments.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

This fast track regulatory action was approved by the State Board of Social Services on June 18, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The legal basis for this regulation is §§ 63.2-217 and 63.2-800 of the Code of Virginia. These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the AG program.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

It is necessary to amend existing regulations to protect the health, safety and welfare of citizens of the Commonwealth by clarifying requirements for assisted living facilities to document proper handling of AG funds and AG recipients' personal needs allowances. Amending the regulations will replace the current requirement for an annual audit report with the requirement for an annual AG certification. The certification process will be less burdensome and costly for the assisted living facilities while providing the necessary information to monitor assisted living facilities' handling of AG funds and the residents' personal needs allowances. The goal of the amended regulations is to provide assurances that AG funds are properly handled while ensuring conformity with federal and state laws and regulations.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track regulatory process is the most effective, efficient and timely method to amend the regulation and to address program needs and provider concerns about new annual provider audit requirements in 22VAC40-25. Virginia Department of Social Services (DSS) staff met twice in late 2007 with a group of assisted living providers and provider organizations to discuss their concerns that meeting the audit requirements would be unnecessarily costly, complicated and burdensome. Participants

included providers; Virginia Health Care Association (VHCA) and Virginia Assisted Living Association (VALA) staff members; and DSS Adult Services, DSS Licensing and DSS Internal Audit staff. A consensus developed that an annual certification of proper handling of AG recipients' personal needs allowances and compliance with AG and DSS licensing requirements, verified by periodic DSS spot audits, would provide sufficient information. Provider representatives and the Secretary's office were consulted as the amendments were developed, and the proposed amendments are not expected to be controversial as they respond to provider concerns.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Substantive changes to the regulation include removing the requirement that assisted living facilities that accept AG recipients submit an "annual audit report" and replacing it with a requirement for an annual AG certification. Substantive changes were made in sections 10, 45, 50, 60 and 70.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

Elderly and disabled AG recipients living in assisted living facilities will benefit from the proposed amendments as they enhance protection of their financial security and well-being. The changes benefit assisted living providers by providing a simpler and less costly means for reporting their handling of residents' AG funds and residents' personal needs allowances. Advantages to the Commonwealth include simplifying the monitoring of provider compliance and enhancing protections for AG recipients against financial abuse or exploitation.

There are no known disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Changes to the regulation do not exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Localities are not particularly affected by the proposed amendments.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The amended regulation clarifies, simplifies and reduces the cost of annual reporting for assisted living facilities by replacing the formal audit requirement with a certification process. As these amendments meet program needs and result in a less costly and burdensome process for assisted living providers, no other regulatory method was considered. Many assisted living facilities are small and/or family businesses.

Economic impact

The proposed amendments will have a positive economic impact. Replacing the current requirement for an annual audit report with an annual certification of the proper handling of recipients’ personal needs allowances will significantly reduce provider compliance costs. There will be no economic impact on AG recipients or local departments of social services. Reviewing annual certification forms will require less Virginia Department of Social Services staff time and expertise than reviewing annual audit reports.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Implementation and enforcement of the amended regulation will not require more state department staff or staff time than the current regulation.
Projected cost of the regulation on localities	No economic impact on localities is expected.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Assisted living facilities that accept AG recipients.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales	As of April 2008 there were 330 assisted living facilities that accepted AG recipients. Licensed assisted living facilities may have as few as four or as many as several hundred residents.

of less than \$6 million.	
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Replacing the annual audit report requirement with a simplified certification process will result in significant reductions in assisted living providers' administrative costs. The proposed amendments were developed at the request of and in collaboration with assisted living providers. It is estimated that meeting the amended reporting requirement will require less than 2 hours of financial management time.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The amended regulation is an effort to establish a less burdensome though equally effective method of ensuring accurate and proper handling of AG funds and recipients' personal needs allowances. Assisted living providers requested that the regulation be reviewed and were consulted as to the proposed change from an annual audit report to annual certification of compliance. No better alternative was identified.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will have a positive impact on family stability, responsibility and safety by strengthening protections for the financial well-being of AG recipients in assisted living facilities. Simplifying and reducing the cost of complying with AG regulations will make it more attractive for assisted living providers to participate in the AG Program. These amendments do not impact parental authority or rights, or impact marital commitment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-25-10		Defines the need for an assisted living facility to prepare an audit report each year.	Removes the definition of “audit report” and replaces it with the term “certification” as the type of report certifying that the assisted living facility has properly managed the resident’s payments and personal needs allowances in compliance with the AG Program regulations and appropriate licensing regulations. Removes definitions of newly licensed assisted living facility, other operating expenses, other operating revenue, and operating costs that related to the previous cost report requirement and are no longer needed. Clarifies the definition of “rate” to mean the rate established by the General Assembly. Removes language linking a request for approval to accept AG recipients with the application for licensure. Clarifies the reference to “qualified assessor” definition in 22 VAC 40-745-100, Assessment in Facilities. Defines “Program” as AG Program. Corrects spelling and capitalization.
22 VAC 40-25-20		Describes assessment	Corrects capitalization and changes references from “Auxiliary Grant Program” to “Program” to simplify language.
22 VAC 40-25-30		Describes basis services	Changes reference from “Auxiliary Grant Program” to “Program” to simplify language.
22 VAC 40-25-45		Describes conditions for participation in the AG Program.	Changes the term “financial audit” to “certification form”. Removes statement “except as permitted herein,” as no exceptions are listed. Clarifies that upon the recipient’s death or discharge from the facility, the provider must return remaining AGs funds to the local department of social service that determined the recipient’s eligibility. Updates reference to 22 VAC 40-771, Adult Services Approved Providers. Corrects grammatical terms.
22 VAC 40-25-50		Discusses establishment of the AG rate.	Removes statement requiring submission of annual audit report. Removes references to other reasons to submit an audit report. Removes references to the content of the annual report. Corrects capitalization errors. Clarifies that the AG rate is determined by the Appropriations Act or changes in the federal maintenance of effort formula.
22 VAC 40-25-60		Discusses reimbursement of funds.	Clarifies how AG funds must be returned upon the recipient’s death or discharge to the local department of social services that determined eligibility.

22 VAC 40-25-70		Discusses the audit	Changes "audit" to "certification." Describes information to be included in the certification and reporting deadlines. Clarifies that the certification form shall be subject to audit by the department. Describes action for failure to submit an annual certification. Updates reference to 22 VAC 40-771, Adult Services Approved Providers.
--------------------	--	---------------------	--